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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 JOSE GUADALUPE PEREZ-
9 FARIAS, JOSE F. SANCHEZ,
10 RICARDO BETANCOURT, and all
11 other similarly situated persons,

12 Plaintiffs,

13 v.

14 GLOBAL HORIZONS, INC., *et al.*,

15 Defendants.

NO. CV-05-3061-RHW

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

16 A bench trial on statutory damages was held in Yakima, Washington on
17 March 3, 2009. Plaintiffs were represented by Lori Isley, Richard Kuhling, and
18 Joe Morrison. The Grower Defendants were represented by Ryan Edgely and
19 Brendan Monahan. The Global Defendants were represented by Matthew Gibbs
and local counsel Gary Lofland.¹

20 **PROCEDURAL BACKGROUND**

21 Plaintiffs filed their class action in May, 2006. On July 28, 2006, Judge
22 Leavitt certified the class and also bifurcated the trial, separating the liability and
23 damages issues. Magistrate Judge Michael Leavitt died before ruling on the
24 substantive motions on liability and damages. Judge Alan McDonald took over the
25 case.

26 On July 11, 2007, Judge McDonald granted Plaintiffs' Motion for Partial

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28 ¹At the beginning of the proceedings, the Court excused Mr. Lofland's
presence at the bench trial.

1 Summary Judgment, finding that Defendants violated the Migrant and Seasonal
2 Agricultural Worker Protection Act (“AWPA”) and the Washington Farm Labor
3 Contract Act (“FLCA”), and awarding statutory damages under FLCA. None of
4 the Defendants had filed a responsive brief to Plaintiffs’ Motion for Partial
5 Summary Judgment. The brief available to Judge McDonald did not cite to
6 relevant Ninth Circuit case law with respect to the awarding of statutory damages.
7 Defendants filed Motions for Reconsideration of Judge McDonald’s order alleging
8 excusable neglect as grounds for failing to respond to the Partial Summary
9 Judgement motions. Judge McDonald died before considering the Motions for
10 Reconsideration. This Court ruled on these motions and has handled the case
11 thereafter.

12 On August 10, 2007, this Court vacated the Judgment with respect to the
13 amount of damages, based on its consideration of relevant Ninth Circuit case law
14 that had not been cited to Judge McDonald (Ct. Rec. 597). The Court did not
15 vacate the portion of Judge McDonald’s Order that found that Defendant Global
16 committed the alleged violations of the FLCA and the AWPA. Instead, the Court
17 vacated the award of statutory damages in the amount of \$500 per violation per
18 person.

19 Judge McDonald did not rule on Plaintiffs’ claims of racial discrimination
20 and failure to provide work. These claims were tried to a jury in September, 2007.
21 The jury found that Defendant Global Horizons and Defendant Mordechai Orian
22 violated the Farm Labor Contractors Act by failing to employ, or discharging or
23 laying off members of the subclasses, and discriminated against the subclasses
24 because of their race (Ct. Rec. 747). The jury awarded \$300,000 in punitive
25 damages to the class and awarded the following damages to the representative
26 Plaintiffs: Ricardo Betancourt: \$5099.50 for lost wages, \$2500.00 for emotional
27 distress; Jose F. Sanchez: \$492.20 for lost wages, \$5,000.00 for emotional distress;
28 Jose Guadalupe Perez-Farias; \$0.00 for lost wages, \$4,000.00 for emotional

1 distress. Judgment was entered on October 23, 2007, consistent with the jury
2 findings.

3 In March 27, 2009, the Court entered its Findings of Fact and Conclusions
4 of Law on Plaintiffs' Claims Against Grower Defendants (Ct. Rec. 863). The
5 Court also addressed the Global Defendants' Post-Trial Motions. The Court
6 upheld the jury verdict with respect to the discrimination claim against Global and
7 Mordechai Orian. The Court held that the evidence was sufficient to uphold the
8 FLCA claims asserted against Global, but found as a matter of law that Mordechai
9 Orian could not be held individually liable for violations of the FLCA.

10 On May 23, 2008, the judgment was amended and the Denied Work
11 Subclass definition used was:

12 U.S. Resident farm workers who claim they were offered
13 employment by Global Horizons to work at Green Acre Farms, Inc. or
14 Valley Fruit Orchards, LLC in 2004, but were not employed by
Global Horizons in 2004.
(Ct. Rec. 884).²

15 CLASS DEFINITION

16 On July 28, 2006, Judge Leavitt granted Plaintiffs' Motion for Class
17 Certification (Ct. Rec. 136). Judge Leavitt certified the Denied Work subclass
18 using the following definition.

19 U.S. Resident Workers: All farm workers living in the United States
20 (with the exception of guest workers) who applied, or who may apply
21 in the future, at Global Horizons for agricultural employment in
Washington State at Green Acres or Valley Farm.

22 Denied Work Subclass: All farm workers living in the United States
(with the exception of guest workers) who applied, or who may apply

23 ²The judgment was amended to address the concern that the proposed
24 amendment could be read broadly to include farm workers offered work by Global
25 with other employers or in other states and during periods of time other than 2004.
26 Although Global now maintains that the Court did not consider its objections to the
27 proposed amendment, it is clear from the briefing that Global did not object to the
28 amending of the judgment for this purpose. See Ct. Rec. 876.

1 in the future, at Global Horizons for agricultural employment in
2 Washington State at Green Acres or Valley Farm.

3 As set forth above, a different Denied Work subclass definition was used at
4 trial. For ease of use, the Court will refer to Judge Leavitt's definition as the
5 Denied Work - Applied subclass and to the definition used at the jury trial as the
6 Denied Work - Offered subclass. The subtle distinction between the two means
7 that anyone who applied is a member of the Denied Work - Applied subclass,
8 while only those Denied Work - Applied subclass members who were offered work
9 are members of the Denied Work-Offered subclass.

10 In reviewing Plaintiffs' proposed class membership list and corresponding
11 methodology for identifying class members, it appears that the distinction between
12 the two class definitions affects nine potential class members. These nine people
13 were listed on Global's Exhibit A, but were unable to provide any additional
14 information that would indicate that they received a job offer. Plaintiffs ask the
15 Court to presume that these persons were offered work based on the
16 inconsistencies within Global's records.

17 Neither Defendant objected to the inclusion of these nine persons in the
18 Denied Work - Offered subclass. Because of this, and because of the
19 inconsistencies within Global records, the Court concludes that these nine
20 members should be included in the Denied Work-Offered subclass.

21 IDENTIFICATION OF CLASS MEMBERS

22 A. Denied Work Subclass

23 In support of Plaintiffs' Phase II Memorandum on Class Membership,
24 Injunctive Relief & Damages, Plaintiffs submitted Exhibit A, which was Plaintiff's
25 summarization of Global's Exhibit A. Plaintiffs' Exhibit A included 402 purported
26 Denied Work Subclass members.

27 The Grower Defendants did not file any objection to Plaintiffs' Exhibit A.
28 The Global Defendants objected to the admission of Plaintiffs' Exhibit A. In reply
to the Global Defendants' objections, Plaintiffs clarified which exhibits they

1 intended to seek admission. Plaintiffs indicated that they no longer intended to
2 seek the admission of the summary charts and would use the summary Exhibits for
3 demonstrative purposes only. Plaintiffs did submit Plaintiffs' Exhibit A -
4 Amended. In reviewing the data, Plaintiffs were able to identify duplicates, as well
5 as identify additional class members. Exhibit A - Amended lists 399 Denied Work
6 Subclass members.

7 At the hearing, Global's only objections to Exhibit A - Amended related to
8 the accuracy of some of the social security numbers. The Court finds Exhibit A -
9 Amended reliable and adopts Plaintiffs' identification of class members contained
10 in Plaintiffs' Exhibit A - Amended. In Plaintiffs' Amended Exhibit T, Plaintiffs
11 indicate there are 397 members of the Denied Work subclass. This number does
12 not include those subclass members who opted out of damages. The Court will
13 award damages based on 397 Denied Work Subclass members.

14 **B. Green Acre Subclass**

15 In support of Plaintiffs' Phase II Memorandum on Class Membership,
16 Injunctive Relief & Damages, Plaintiffs submitted Exhibit K, which is a summary
17 that contains a list of purported Green Acre subclass members and the criteria used
18 to determine class membership. Plaintiffs relied on Global's Exhibit B, Exhibit 50,
19 wage and hour records, crew lists, and other miscellaneous documents to establish
20 class membership.

21 The Defendants did not lodge specific objections to Plaintiffs' list. The
22 Court concludes that the individuals listed in Plaintiffs' Exhibit K are
23 presumptively members of the Green Acre Subclass. In Plaintiffs' Amended
24 Exhibit T, Plaintiffs indicate there are 107 members of the Green Acre Subclass.
25 The Court will award damages based on 107 members of the Green Acre Subclass.

26 **C. Valley Fruit Subclass**

27 In support of Plaintiffs' Phase II Memorandum on Class Membership,
28 Injunctive Relief & Damages, Plaintiffs submitted Exhibit P, which is a summary

1 that contains a list of purported Valley Fruit Subclass members and the criteria
2 used to determine class membership. Plaintiffs relied on Global's Exhibit B,
3 Exhibit 50, Trial Exhibit 38, wage and hour records, and timesheets to establish
4 class membership.

5 The Defendants did not lodge specific objections to Plaintiffs' list. The
6 Court concludes that the individuals listed in Plaintiffs' Exhibit P are
7 presumptively members of the Green Acre Subclass. In Plaintiffs' Amended
8 Exhibit T, Plaintiffs indicate there are 146 members of the Valley Fruit Subclass.
9 The Court will award damages based on 146 members of the Valley Fruit Subclass.

10 STATUTORY DAMAGES

11 In its Order Vacating Judgment, the Court concluded that under the clear
12 language of Wash. Rev. Code § 19.30.170(2), the Court has discretion to decide
13 whether to award damages, either actual or statutory, or other equitable relief, or to
14 decide not to award damages even if a violation has occurred, and significantly, the
15 Court has discretion to award statutory damages of less than \$500 per violation.

16 In determining the appropriate amount of statutory damages, the Court
17 indicated that it would look to the Ninth Circuit case of *Six(6) Mexican Workers*
18 for guidance.³ *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301
19 (9th Cir. 1990). In that case, the Circuit instructed district courts to consider the
20 following factors in determining whether a particular award serves the statute's
21 deterrence and compensation objectives: (1) the amount of award to each plaintiff;

22
23 ³The *Six (6) Mexican Workers* case addressed the federal Farm Labor
24 Contractor Registration Act (FLCRA). Because § 19.30.170(2) has never been
25 interpreted by an appellate court in the state of Washington, the parties agreed that
26 it is proper for this Court to look to federal court decisions interpreting the
27 analogous provision of AWPA or FLCRA. *See also Escobar v. Baker*, 814
28 F.Supp. 1491 (W.D. Wash. 1993).

(2) the total award; (3) the nature and persistence of the violations; (4) the extent of the defendant's culpability; (5) damage awards in similar cases; (6) the substantive or technical nature of the violations; and (7) the circumstances of each case. *Id.* at 1309.

FLCA and AWPA are two statutes that attempt to address the same problem, namely the protection of farmers and farm workers against exploitation by farm labor contractors by requiring the disclosure of terms and conditions of employment and through registration of contractors and regulation of their activities. Wash. Rev. Code § 19.30 *et seq*; 7 U.S.C. § 2041. Although the authority applying the federal statutes is instructive, it is not binding on this Court. Notably, there are significant differences between FLCA and AWPA. First, AWPA requires that before awarding any damages, the Court must find that the defendant intentionally violated the provisions. 29 U.S.C. § 1854(c).⁴ Second, AWPA limits damages for multiple infractions of a single provision to only one violation for purposes of determining the amount of statutory damages. Finally, if

⁴U.S.C. § 1854(c) provides:

If the court finds that the respondent has intentionally violated any provision of this chapter or any regulation under this chapter, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of up to \$500 per plaintiff per violation, or other equitable relief, except that (A) multiple infractions of a single provision of this chapter or of regulations under this chapter shall constitute only one violation for purposes of determining the amount of statutory damages due a plaintiff; and (B) if such complaint is certified as a class action, the court shall award no more than the lesser of up to \$500 per plaintiff per violation, or up to \$500,000 or other equitable relief.

(2) In determining the amount of damages to be awarded under paragraph (1), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

1 a class action is pursued, damages are capped at \$500,000.⁵

2 There is little Ninth Circuit precedent that has addressed the awarding of
3 statutory damages under AWP or FLCRA. Notably, although one of the factors
4 the Court should consider is whether the violation is technical or substantive in
5 nature, no court has attempted to define or explain these terms.

6 Courts have recognized, however, that technical violations should result in
7 less damages, whereas substantive violations have been awarded greater amounts.
8 The Seventh Circuit, in *De La Fuente v. Stokely-Van Camp, Inc.*, concluded that
9 the failure to post a written statement of the terms and conditions of employment,
10 and the failure to give the workers clearance orders in Spanish were technical
11 violations of FLCRA. 713 F.2d 225, 239-40 (7th Cir. 1983). Recently, Judge
12 Sharp of the District Court of Northern Indiana awarded a total of \$16,950 to four
13 plaintiffs and two minor children. *See Martinez v. Mendoza*, 595 F.Supp.2d 923,
14 928 (N.D. Ind. 2009). In that case, it appears that Judge Sharp awarded \$100 for
15 each technical violation per plaintiff and \$500 per plaintiff for those violations that
16 directly and adversely affected the plaintiffs. For instance, he awarded \$100 per
17 plaintiff per violation of 29 U.S.C. § 1811(a) (failure to register); § 1821(b)
18 (failure to provide written disclosures); § 1821(c) (failure to post in conspicuous
19

20 ⁵Additionally, although other circuits have concluded that statutory damages
21 under AWP are punitive in nature, the Ninth Circuit has specifically declined to
22 permit the imposition of a “penalty disproportionate to the offense.” *Six Mexican*
23 *Workers*, 904 F.2d 1301, 1309 (9th Cir. 1990); *Alvarez v. Longboy*, 697 F.2d 1333,
24 1320 (9th Cir. 1983). It is not clear whether the Washington legislature intended
25 statutory damages under FLCA to be punitive. Nevertheless, as discussed below,
26 Plaintiffs’ interpretation of section 19.30.170(2) would necessarily result in a
27 punitive award because the amount of damages would have no relationship to the
28 harm caused by the wrongful conduct.

1 place the rights and protections afforded workers under the AWPB); § 1821(d)
2 (failure to post requirements imposed upon housing providers); § 1821(e) (failure
3 to provide records); § 1822(c) (violation of terms of working arrangement); § 1843
4 (failure to provide written statement regarding working conditions); § 1823(b)(1)
5 (failure to post certificate). The court awarded \$500 per plaintiff per violation of
6 29 U.S.C. § 1821(d)(1) (failure to keep records); § 1821(d)(2) (failure to provide
7 itemized written pay statements); § 1821(f) (knowingly provide false or misleading
8 information); § 1821(a) (safety and health of housing); and § 1841(b) (vehicle /
9 transportation safety).

10 Based on its review of the case law, the Court defines a technical violation
11 as conduct that violates the plain language of the statute, but does not necessarily
12 result in actual or specific harm to the worker. Substantive violations are conduct
13 that violates the plain language of the statute and results in specific harm to the
14 worker.

15 Plaintiffs initially argued to Judge McDonald that statutory damages under
16 FLCA are mandatory, and courts must award \$500 per class member per violation.
17 As noted, no brief in opposition was filed. Based on Plaintiffs' briefing, Judge
18 McDonald awarded \$1,857,000.00 in statutory damages under FLCA. Plaintiffs
19 now ask the Court to exercise its discretion and award statutory damages in the
20 amount of \$500 per class member per violation for a total award of \$1,998,500.00.
21 *See* Pl. Ex. T (Amended).

22 Plaintiffs' primary justification for the large award is its insistence that such
23 an award is necessary to punish and deter future violations. At the hearing, the
24 Court told the parties that an award of \$500 per class member per violation may
25 violate due process. The Court recognizes that the state of Washington possesses
26 discretion over the imposition of statutory damages; nevertheless, any damage
27 award must meet both procedural and substantive constitutional requirements.
28 *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003). In the

1 world of punitive damages, where the goals are punishment and deterrence, the
2 award of damages should be reasonably predictable in its severity. *Exxon Shipping*
3 *Co. v. Baker*, 128 S.Ct. 2605, 2627 (2008) (“The common sense of justice would
4 surely bar penalties that reasonable people would think excessive for the harm
5 caused in the circumstances.”); *State Farm*, 538 U.S. at 416 (reasoning that
6 “[e]lementary notions of fairness enshrined in our constitutional jurisprudence
7 dictate that a person receive fair notice not only of the conduct that will subject
8 him to punishment, but also of the severity of the penalty that a State may
9 impose.”). Moreover, it is recognized that while punitive damages may serve the
10 same purposes as criminal penalties, defendants subjected to punitive damages in
11 civil cases have not been accorded the protections applicable in a criminal
12 proceeding. *Id.* at 417.

13 Recently, the Ninth Circuit reviewed an award of punitive damages and
14 made the following observations. *See Southern Union Company v. James M. Irvin*,
15 2009 WL 792475 (9th Cir. Mar. 27, 2009). First, due process “prohibits the
16 imposition of grossly excessive or arbitrary punishments on a tortfeasor.” *Id.* at
17 *2. Second, the objective of punitive damages is deterrence and punishment,
18 without being unreasonable and disproportionate. *Id.* Finally, the Circuit noted
19 that determining the constitutional limits with respect to punitive damages will
20 vary from case to case. *Id.* at *3. “Determining that limit is an art, not a science;
21 no mathematical formula controls; no single asymptote defines the limit for all
22 cases.” *Id.*

23 The Court believes it must consider these due process concerns when
24 determining the appropriate amount of statutory damages under FLCA. In doing
25 so, the Court will consider (1) the degree of reprehensibility of the defendant’s
26 misconduct; (2) the disparity between the actual or potential harm suffered by the
27 plaintiff and the statutory damages award; and (3) the difference between the
28 statutory damages authorized by FLCA and the civil penalties authorized or

1 imposed in comparable cases. *Id.*

2 The Court is also convinced that these same due process concerns reinforce
3 the Court's interpretation that section 19.30.170(2) provides the Court with
4 discretion to award no statutory damages, or to award less than \$500 in statutory
5 damages for each violation that was found by Judge McDonald. For instance,
6 Global put its address and phone number of the paycheck that was given to its
7 employees, but did not place its name, address, and phone number on the detached
8 pay stub. Plaintiffs are seeking over \$126,000.00 in statutory damages for
9 Global's failure to put its name and address on the pay stub, even when no class
10 member complained or was prejudiced by this omission. Plaintiffs are seeking
11 over \$225,000.00 in statutory damages for Global's failure to explicitly provide
12 production standards that in all practicality would have been technically useless
13 given that production standards change daily based on wide variety of factors that
14 are unique to the orchard industry. These violations are technical violations and
15 are in no way proportional to the harm that the Washington statute intended to
16 prevent. To say that the Court has absolutely no discretion but to award such
17 exorbitant amounts of statutory damages would violate all notions of fairness
18 inherent in our judicial system.

19 This case was preceded by an investigation by the Washington Department
20 of Labor that ultimately resulted in a Settlement Agreement between the state of
21 Washington, the Global Defendants and the Grower Defendants. As part of the
22 settlement process, Global admitted to violating Washington state and federal laws.
23 (Ct. Rec. 467-3, Ex. G). The state of Washington assessed \$10,250.00 in penalties
24 and \$216,650.08 in wage assessments (Ct. Rec. 1081-2).⁶ Plaintiffs' complaint
25

26
27 ⁶On April 9, 2009, the Global Defendants requested the Court to take
28 judicial notice of the June 3, 2005 letter from the Washington Department of Labor
and Industries that was relied upon by Mr. Gibbs during his argument at the

1 followed the State's investigation, alleging many of the same violations of state
2 law. The Court finds it significant that the state of Washington has vindicated the
3 public's interest in deterring the wrongful conduct that occurred in 2004. The
4 investigation produced a significant record that was relied upon by Plaintiffs in
5 developing their case.

6 The Court notes that with respect to the violation regarding the inadequate
7 pay statements, the state of Washington assessed a \$1000.00 penalty, yet Plaintiffs
8 are seeking \$500.00 for each member of the Green Acre and Valley Fruit subclass
9 for a total of \$126,500.⁷ Likewise, with respect to the violation regarding the

10 _____
11 damages hearing (Ct. Rec. 1081-1). Plaintiffs objected to Defendants' request for
12 judicial notice (Ct. Rec. 1082). Although Mr. Gibbs referred to this letter in his
13 argument at the hearing, Plaintiffs did not object at that time. Therefore, any
14 objection to the use of the letter is waived. Additionally, this letter was a
15 culmination of an investigation conducted by the Department of Labor and
16 Industries. Documents from this investigation were relied upon heavily by
17 Plaintiffs in support of their summary judgment motions and at the trial on
18 liability. Notably, this letter was included in Plaintiffs' Exhibits submitted to the
19 Court in anticipation for the jury trial on liability. *See* Pl. Trial Ex. 10. Thus, it has
20 been part of the Court's record since September, 2007. Moreover, in their
21 opposition, Plaintiffs argue that the Court should limit judicial notice to the fact
22 that penalties were assessed for violations. As set forth below, the Court is relying
23 on the 2005 letter for that reason. Finally, Plaintiffs are not disputing its
24 authenticity, accuracy, or relevance of the letter. For these reasons, the Court
25 believes it is appropriate to take judicial notice of the 2005 letter.

26 ⁷Wash. Rev. Code § 19.30.160 states:

27 (1) In addition to any criminal penalty imposed under RCW
28 19.30.150, the director may assess against any person who violates
this chapter, or any rule adopted under this chapter, a civil penalty of
not more than one thousand dollars for each violation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW ~ 12

1 unlawful deduction of Washington state income tax, the state of Washington
2 assessed a \$1000 penalty. As set forth above, Plaintiffs are seeking \$500 for each
3 member of the Green Acre and Valley Fruit subclass for a total of \$126,500. Thus,
4 where the state of Washington concluded that \$2000.00 was an appropriate penalty
5 for violations of FLCA, Plaintiffs are seeking over \$250,000.00 in statutory
6 damages.

7 Moreover, awarding Plaintiffs \$1,998,500.00 in statutory damages as
8 requested would not only punish the Grower Defendants, who are jointly and
9 severally liable for the damages, but would ultimately harm Plaintiffs, whose
10 welfare is linked to the region's fruit-growing industry. *Salazar-Calderon v.*
11 *Presidio Valley Farmers Ass'n*, 765 F.2d 1334, 1347 (5th Cir. 1985).

12 Finally, it is worth noting that the jury awarded two of the individually-
13 named Plaintiffs actual damages with respect to the breach of contract claim.
14 Thus, it was not impossible to try the actual damages portion of the proceedings.
15 Plaintiffs deliberately chose not to seek actual damages in favor of the statutory
16 damages, where the primary focus is not necessarily on compensating the
17 individual class members, but rather to effectuate the purposes of the Act.

18 With these considerations in mind, the Court now addresses the question as
19 to the appropriate amount of statutory damages that should be awarded to class
20 members, based on the record before the Court.

21 _____
22 Given that the statute permits the state to award damages for each violation,
23 the potential penalty for this violation could have been in the hundreds of
24 thousands. Likewise, the State found that Global unlawfully deducted Washington
25 state income tax from 260 workers' pay. Thus, the State had the opportunity to
26 assess \$1000 for each worker for a total of \$260,000.00, but chose to assess only
27 \$1000 in penalties. Additionally, the State found that Global failed to pay full
28 wages to four bus drivers. Rather than assess \$4000 in penalties, the State chose to
assess \$1000 for this violation.

1 **A. Judge McDonald's Order**

2 Judge McDonald found that the Global Defendants violated FLCA and
3 awarded statutory damages of \$ 500 per plaintiff per violation. In doing so, Judge
4 McDonald cited to Wash. Rev. Code § 19.30.170(1), (2), which states:

5 (1) After filing a notice of a claim with the director, in addition to any
6 other penalty provided by law, any person aggrieved by a violation of
7 this chapter or any rule adopted under this chapter may bring suit in
8 any court of competent jurisdiction of the county in which the claim
9 arose, or in which either the plaintiff or respondent resides, without
10 regard to the amount in controversy and without regard to exhaustion
11 of any alternative administrative remedies provided in this chapter. No
12 such action may be commenced later than three years after the date of
13 the violation giving rise to the right of action. In any such action the
14 court may award to the prevailing party, in addition to costs and
15 disbursements, reasonable attorney fees at trial and appeal.

16 (2) In any action under subsection (1) of this section, if the court finds
17 that the respondent has violated this chapter or any rule adopted under
18 this chapter, it may award damages up to and including an amount
19 equal to the amount of actual damages, or statutory damages of five
20 hundred dollars per plaintiff per violation, whichever is greater, or
21 other equitable relief.

22 Wash. Rev. Code § 19.30.170(1),(2).

23 Judge McDonald interpreted these provisions to support an automatic
24 \$500.00 award for each violation, separate awards for multiple violations of a
25 subsection, no cap for class action awards, and attorneys' fees and costs. Ct. Rec.
26 507 p. 29, n.6.

27 As noted above, the Court reviewed the Ninth Circuit case law and
28 concluded that rather than provide for mandatory damages, the statute permits the
Court to exercise its discretion in awarding statutory damages. The Court
concluded that a bench trial on the appropriate amount of damages would permit
this Court to exercise its discretion in awarding the appropriate amount of
damages.

The Court did not address whether it would reconsider the question as to
whether Plaintiffs would have to show that the class members were aggrieved
before they can obtain statutory damages. Clearly Judge McDonald found that the
class members had demonstrated that they were aggrieved because, according to

1 subsection (1), a person who was not aggrieved would not be entitled to statutory
2 damages.

3 In their Motion for Reconsideration, the Grower Defendants argued that
4 statutory damages were not mandatory, but did not specifically argue that the
5 judgment should be vacated because the class members were not aggrieved. The
6 Grower Defendants now argue that for some violations, however, statutory
7 damages are not warranted because Plaintiffs cannot show that they were
8 aggrieved.

9 Just as the Court accepts Judge McDonald's findings that violations
10 occurred, the Court will accept Judge McDonald's conclusion that class members
11 were aggrieved. Judge McDonald and the jury found that Plaintiffs had met their
12 burden of showing class-wide damages. Plaintiffs are asking for liquidated
13 statutory damages for class-wide claims. As such, the Court does not need to make
14 specific factual calculations of actual injury. *See Six (6) Mexican Workers*, 904
15 F.2d at 1310; *see also Montelongo v. Meese*, 803 F.2d 1341, 1352 (5th Cir. 1986)
16 (rejecting argument that individual class members are not entitled to damages
17 because they had either forgotten or never known the details of the job offers).

18 **B. Evidence to be Considered**

19 The parties agreed that the available evidence for the damages phase consists
20 of the evidence that was introduced at summary judgment and trial. The Global
21 Defendants asserted that Plaintiffs should be required to present a separate
22 evidentiary record for the damages phase because irrelevant and inadmissible
23 evidence should not be considered by the Court and due process demands that
24 Defendants be able to specifically contest any and all of the evidence supporting
25 Plaintiffs' alleged damages as well as class membership.

26 The Court disagrees. The Court sat through the jury trial. It can filter out
27 the irrelevant and inadmissible evidence. Likewise, the complete summary
28 judgment record is also before the Court. The Global Defendants' due process

1 rights were waived when they failed to respond to Plaintiffs' summary judgment
2 motions. Moreover, the Global Defendants fully participated in the jury trial,
3 including challenging the admission of evidence based on relevancy and other
4 grounds. Plaintiffs are not required to present to the Court a separate evidentiary
5 record in support of their request for statutory damages.

6 **C. Analysis**

7 The *Six (6) Mexican Workers* factors require the Court to consider the
8 circumstances in each case. The circumstances in this case are unique. Here, the
9 jury and the Court found that Global Horizons deliberately took steps to discourage
10 local workers from obtaining work at Global Horizons. And in doing so, it
11 violated various provisions of the Washington Farm Labor Contractors Act. But, it
12 is clear that the underlying harm was the failure to hire the local workers in favor
13 of hiring the H-2A workers. A corollary to that harm is the finding by Judge
14 McDonald that Global committed a number of technical violations of FLCA.

15 The ten FLCA violations found by Judge McDonald can be divided into four
16 separate categories: recruitment violations, working arrangement violations, failing
17 to pay wages; and failing to pay adequate pay statements.

18 **1. Recruitment Violations**

19 **(a) Failure to Provide Required Disclosures**

20 Judge McDonald found that Global failed to provide U.S. Resident Workers
21 with the disclosures on the form required by the Washington Department of Labor
22 and failed to provide the statement in Spanish.

23 Defendants argue that, notwithstanding the fact that the correct form was not
24 used, Plaintiffs received all of the required information from the two-page
25 summary that Worksource provided the applicant. Defendants allege that the
26 summary contained information about the wages offered, the date, duration and
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1 description of the available employment.⁸ Defendants assert that a WorkSource
2 employee would explain to each applicant, in Spanish, information about the
3 Clearance Order for which the person was applying.

4 The difficulty in assessing the harmed caused by the failure to use the
5 required form is that the neither party provided Judge McDonald with the required
6 form.⁹ Moreover, there is nothing in the record to establish exactly what
7 information contained in the Clearance Order was presented to the applicant. The
8 Clearance Order and attachments constitute a 17-page technical document.
9 Providing the Clearance Order is not the same as providing a document that clearly
10 and simply states the rate of pay, whether bonuses will be provided, whether
11 personal loans will be provided, whether transportation, housing, health and day
12 care services will be provided, the employment conditions, whether any equipment
13 or clothing is required for the job, the owner of the operations, the working
14 conditions and whether there is an arrangement with a farm labor contractor. *See*
15 Wash. Rev. Code § 19.30.110(7). Moreover, because this form was mandated by
16 the State of Washington, farm laborers would be familiar with this form and the
17 information contained on the form. Use of a consistent form would facilitate the
18 worker's understanding of the job benefits and requirements. The Clearance Order
19 was not an adequate substitute for the failure to use the required form. Moreover,
20 the Court finds that throughout the recruitment process, Global deliberately tried to

21 ⁸This two-page summary was never introduced in the record.

22 ⁹At the bench trial, Plaintiffs introduced a copy of the required form.
23 Additionally, the Court was able to locate an "Agreement - Farm Labor Contractor
24 and Workers" from the Washington Department of Labor & Industries. *See*
25 <http://www.lni.wa.gov/Forms/pdf/700046a0.pdf> (English) and
26 <http://www.lni.wa.gov/Forms/pdf/700046z0.pdf> (Spanish) (last visited Feb. 26,
27 2009). It appears that this form was updated on March, 2008. This form is
28 consistent with the requirements of Wash. Rev. Code § 19.30.110(7).

1 under-inform the prospective local workers in an attempt to discourage them from
2 applying for work with Global.

3 The state of Washington did not find a violation of Wash. Rev. Code §
4 19.30.110(7) and did not assess any penalties for the failure to provide the required
5 form.

6 The Court concludes that although this is a technical violation, the failure to
7 provide the information on the required form merits an award of \$100.00 per class
8 member. The Court awards \$39,700.00 to the Denied Work subclass; \$10,700.00
9 to the Green Acre subclass; and \$14,600.00 to the Valley Fruit Subclass.

10 **(b) Providing False and Misleading Information about the**
11 **Terms of Employment**

12 Judge McDonald found that Global failed to inform the applicants of the
13 availability of the transportation benefits that were promised in the Clearance
14 Orders and failed to inform the applicants that they would have to meet specific
15 production standards. Judge McDonald found that Global imposed specific
16 production standards on the workers and fired workers for failing to meet those
17 standards.

18 Wash. Rev. Code § 19.30.120(2) provides:

19 No person acting as a farm labor contractor shall:

20 (2) Make or cause to be made, to any person, any false,
21 fraudulent, or misleading representation, or publish or circulate or
22 cause to be published or circulated any false, fraudulent, or misleading
information concerning the terms or conditions or existence of
employment at any place or places, or by any person or persons, or of
any individual or individuals.

23 **(i) Transportation Benefits**

24 Plaintiffs assert that rather than inform the applicants that they could obtain
25 transportation to the work site, Global weeded out prospective employees who did
26 not have their own transportation. Plaintiffs did not provide any specific instances
27 of where a person was not offered a job because they did not have transportation,
28 or any testimony that had they known about the transportation service as set forth

1 in the Clearance Order, the employees would have utilized the service.¹⁰ On the
2 other hand, there was testimony that a worker tried to board a bus taking the Thai
3 workers to the Green Acres Orchard but was told that the bus was only available
4 for the Thai workers.

5 Traditionally, agricultural workers are some of the lowest paid workers. The
6 Court finds that if offered, many of the workers would have accepted
7 transportation benefits. Moreover, the Court finds that the failure to inform the
8 workers regarding the transportation benefits that were set forth in the Clearance
9 Order was a deliberate attempt on the part of Global to misinform the local workers
10 and discourage them from obtaining work at Global.

11 The state of Washington did not address this conduct and therefore did not
12 assess a penalty for the failure to accurately inform the employees regarding
13 transportation benefits.

14 (ii) **Production Standards**

15 Judge McDonald found that Defendants provided false and misleading
16 information regarding the production standards. As explained in the hearing,
17 however, the testimony presented at trial indicated that, in the context of orchards,
18 production standards can change daily, depending on the weather, the time of year,
19 the type of crop, the type of work, the size and age of the trees, etc. and that it
20 would be nearly impossible to set forth the type of production standards in the
21 Clearance Order that Plaintiffs argue should have been provided.

22 The state of Washington concluded that Global Horizons applied a
23 productivity standard that was not contained in the January 20, 2005 H-2A
24 application, but did not assess a penalty based on this conduct.

25 The Court does not believe a separate award of statutory damages for failing
26 to provide productions standards in the Clearance Order is necessary or warranted.

27 ¹⁰The nature of the transportation benefits provided in the Clearance Order
28 consisted of transportation from the employer-provided housing to the fields.

1 Nevertheless, the Court concludes Global's conduct in providing false and
2 misleading information during the recruitment process regarding transportation
3 benefits warrants an award of \$100.00 per class member. The Court awards
4 \$39,700.00 to the Denied Work subclass; \$10,700.00 to the Green Acre subclass;
5 and \$14,600.00 to the Valley Fruit Subclass.

6 **2. Working Arrangement Violations**

7 Judge McDonald found that Global violated Wash. Rev. Code §
8 19.30.110(5), which provides:

9 Every person acting as a farm labor contractor shall:

10 5) Comply with the terms and provisions of all legal and valid
11 agreements and contracts entered into between the contractor in the
capacity of a farm labor contractor and third persons.

12 Judge McDonald found that this provision was violated in two ways: (1) by
13 failing to provide written reprimands upon a second violation of a work rule; and
14 (2) by employing H-2A workers without approval from the Department of Labor.

15 **(a) Employing H-2A Workers**

16 The theory of the harm from employing H-2A workers without approval of
17 the Department of Labor is the same as the failure to provide work. Presumably, if
18 the H-2A workers were not used, local workers would have been provided the
19 work. This will be addressed below. There is no private cause of action under the
20 H-2A statutes and regulations. The Court declines to award separate statutory
21 damages under FLCA for violations of the H-2A statutes and regulations, but will
22 consider the fact that H-2A workers were hired in lieu of local workers when
23 determining the appropriate amount of damages for the failure to employ and the
24 discharging and laying off of workers.

25 The state of Washington assessed a \$1000 penalty for failing to notify the
26 U.S. Department of Labor under H-2A requirements when Global moved workers
27 from one location to another and did not house their workers in locations identified
28 in their application. An additional \$1000 penalty was assessed for

1 misrepresentations in documents provided to the Department of Labor & Industries
2 of the number of workers that were to be brought to work in Washington.

3 (b) **Failure to Provide Written Reprimands**

4 The evidence presented at trial was that persons were given verbal
5 reprimands regarding discipline, but not written reprimands. Jose Cuevas and
6 Ignacio Ramos both testified that they gave workers verbal reprimands but never
7 provided written warnings as required by the Clearance Order.

8 The State of Washington did not address this conduct and therefore did not
9 assess a penalty for the failure to provide written reprimands.

10 The Court concludes that \$10.00 per class member is an appropriate amount
11 of statutory damages for Global's failure to provide written reprimands as required
12 by the Clearance Order. The Court awards \$1070.00 to the Green Acres subclass
13 and \$1460.00 to the Valley Fruit subclass.

14 **3. Failure to Pay Wages Due**

15 (a) **Unlawful Deduction of State Income Tax**

16 At summary judgment, Global admitted that, for a limited time and due to
17 clerical error, it deducted from the pay of certain Green Acre and Valley Fruit
18 subclass members taxes that were not required by the state of Washington. The
19 employees were reimbursed for the deductions in 2005. The total amount withheld
20 were \$4,386.51. Judge McDonald found questions of fact with regard to whether
21 the withholding of the wages was willful. No evidence was presented at trial to
22 support a finding that the withholding of the Washington state tax was anything but
23 a clerical error.

24 The state of Washington assessed a \$1000.00 penalty for the improper
25 deductions for taxes not required by the State and ordered the reimbursement of the
26 withheld amount.

27 Under Washington law, where a employee demonstrates that wages have
28 been willfully withheld, damages are equal double the amount of wages that was

1 withheld. The Court finds that this is an appropriate criteria from which to award
2 statutory damages for the unlawful deduction of Washington state income tax. The
3 Court awards \$8773.02 in statutory damages for this violation. This amount will
4 be allocated to the 72 Green Acre subclass members and 49 Valley Fruit subclass
5 members set forth in Plaintiff's Exhibit J.

6 (b) **Failure to Pay Piece Rate**

7 Judge McDonald also found that twenty-four workers at Valley Fruit were
8 entitled to be paid the piece rate of \$19.00 per bin in the pear harvest in 2004 and
9 that it was undisputed that the workers were not, in fact, paid a piece rate. Instead,
10 workers were paid an hourly rate in which they earned almost \$70.00 per day,
11 which computes to be more than they would have received at the approved piece
12 rate. Plaintiffs did not present any evidence to Judge McDonald or during the trial
13 that the workers' productivity would have increased significantly to earn more by
14 piece rate than they actually received. These twenty-four workers picked pears for
15 two days.

16 Even so, the failure to pay the bin rate represents willful conduct on the part
17 of Global, which is evidence by the fact that Global initially filed an application for
18 a Clearance Order that did not include a bin rate. The Department of Labor
19 rejected the application for the Clearance Order, stating that Global needed to
20 include a bin rate. Global eventually acquiesced and included a bin rate in a
21 resubmitted application for a Clearance Order. Nevertheless, Global failed to
22 notify the workers that a bin rate was included in the Clearance Order.

23 The Court awards \$100 to the twenty-four workers identified in Plaintiffs'
24 Exhibit R.

25 **4. Failure to Provide Adequate Written Pay Statements**

26 (a) **Failure to Itemize Piece Rates Earned**

27 Judge McDonald found that Global failed to itemize the pieces picked on the
28 pay statement when work was paid on a piece rate basis at Valley Fruit in 2004.

1 Pursuant to Wash. Rev. Code § 19.30.110(8):

2 Every person acting as a farm labor contractor shall:

3 (8) Furnish to the worker each time the worker receives a
4 compensation payment from the farm labor contractor, a written
5 statement itemizing the total payment and the amount and purpose of
6 each deduction therefrom, hours worked, rate of pay, and pieces done
7 if the work is done on a piece rate basis, and if the work is done under
8 the Service Contract Act (41 U.S.C. Secs. 351 through 401) or related
9 federal or state law, a written statement of any applicable prevailing
10 wage.

11 This violation affected 99 Valley Fruit subclass workers who worked in the
12 cherry harvest.

13 The evidence indicated that Mr. Verbrugge unilaterally offered the piece rate
14 to the workers in the field, after which he contacted Global. Global's accounting
15 system was not equipped to handle the piece rate and this was the reason why the
16 piece rate was not included in the pay statements. There was no evidence that any
17 of the workers complained to Global regarding the lack of piece rate. There was
18 no evidence that Global failed to properly pay the workers for the piece units that
19 were picked by the workers. At best, this was an oversight caused by the exigent
20 circumstances of ripening fruit and the threat of losing labor to pick the fruit.

21 The Court awards \$10.00 to the 99 Valley Fruit subclass workers identified
22 in Plaintiffs' Exhibit Q.

23 **(b) Failure to Provide Employers Name, Address and**
24 **Telephone Number on Pay Statement**

25 In addressing statutory damages, Judge McDonald indicated that one of the
26 violations was failing to provide adequate pay statements in violation of Wash.
27 Admin. Code 296-131-015. In their briefing, Plaintiffs argued that Defendants
28 were required to provide pay statements that identified the pay period and include
the employer's name, address, and telephone number, pursuant to Wash. Admin.
Code 296-131-015.

FLCA does not require the employer's name, address, and telephone
number, rather this is required by the Washington regulations. As noted above, the

1 state of Washington sought \$1000.00 in penalties for this violation. The Court
2 concludes that this amount provides an appropriate gauge to access the need to
3 deter and to adequately compensate Plaintiffs for this violation. Plaintiffs did not
4 introduce any evidence that any class member was prejudiced by the failure to
5 provide the information on the pay statement. It is undisputed that this information
6 was provided on the pay check. There was no evidence presented that any of the
7 class members complained to Global that its name and address were not provided
8 on the pay statement, or demanded that this information be provided to the
9 workers.

10 The state of Washington assessed a \$1000.00 for the failure to provide all
11 information required on the statement of earnings to the workers. It found that
12 Global failed to provide the its address, telephone number, beginning and ending
13 dates of the pay period, and failed to include rate of pay for “other” hours.

14 The Court awards \$10.00 to each member of the Green Acres and Valley
15 Fruit subclasses. The Court awards \$1070.00 to the Green Acres subclass and
16 \$1460.00 to the Valley Fruit subclass.

17 **5. Failure to Provide Work**

18 The jury found that Defendants failed to employ the Denied Work Subclass
19 and laid off or fired the members of the Green Acre and Valley Fruit Subclass in
20 violation of the Clearance Order. Plaintiffs’ theory was that Global Horizons
21 deliberately took steps to discourage the local workers to work for Global Horizons
22 because Global wanted to utilize Thai workers. The Court also accepted this
23 theory at trial. Clearly, this was the most egregious violation.

24 The evidence at trial, however, was that the WorkSource accepted and
25 referred more applicants than were available jobs. In reviewing the evidence
26 presented at trial and found by Judge McDonald, the most H-2A workers that were
27 employed at any given time was 172 Thai workers (Ct. Rec. 507, p. 17). This
28 represents the number of jobs that would have been available to the local workers

if the Thai workers would not have been utilized. In determining the appropriate amount of statutory damages, the Court concludes that multiplying \$500.00 times this number is a good starting point for determining the amount of statutory damages to award the class members. This amount is \$86,000.00. If this amount is divided by the total number of class members (650), each class member would receive approximately \$132.00. The Court finds that an award of \$150.00 per class member is an appropriate amount to meet the goals of compensation and deterrence. The evidence is undisputed that not every person who applied for a job with Global would have been hired even if Global chose not to utilize the Thai workers. Even so, an award for \$150.00 for each Denied Work - Offered subclass member, and each Valley Fruit and Green Acres subclass member is appropriate. The Court awards \$59,550.00 to the Denied Work subclass, \$16,050.00 to the Green Acres subclass; and \$21,900.00 to the Valley Fruit subclass.

D. Conclusion

The Court awards the following statutory damages:

Denied Work Subclass Violation	No. of Members	Individual Award	Total
Failure to Provide Required Disclosures	397	\$100	\$39,700
Providing False and Misleading Information: transportation benefits and production standards	397	\$100	\$39,700
Employing H-2A Workers	397	0	0
Failing to Employ	397	\$150	\$59,550
Total	397	\$350	\$138,950

Green Acre Subclass Violation	No. of Members	Individual Award	Total
Failure to Provide Required Disclosures	107	\$100	\$10,700
Providing False and Misleading Information: transportation benefits and production standards	107	\$100	\$10,700
Employing H-2A Workers	107	0	0

Laying Off in violation of Clearance Order	107	\$150	\$16,050
Failure to Provide Written Reprimands	107	\$10	\$1,070
Failure to Provide Adequate Pay Statements - name and address	107	\$10	\$1,070
Failure to Pay Wages Due - Deducting Washington State Tax	72	¹¹	¹²
Total		\$370	\$39,590

Valley Fruit Subclass Violation	No. of Members	Individual Award	Total
Failure to Provide Required Disclosures	146	\$100	\$10,700
Providing False and Misleading Information: transportation benefits and production standards	146	\$100	\$10,700
Employing H-2A Workers	146	0	0
Laying Off in violation of Clearance Order	146	\$150	\$21,900
Failure to Provide Written Reprimands	146	\$10	\$1,460
Failure to Provide Adequate Pay Statements - name and address	146	\$10	\$1,460
Failure to Provide Adequate Pay Statements - itemization	99	\$10	\$990

¹¹The Court is unable to determine the exact number of Green Acre Subclass members who were affected by this violation. The total amount of the damages award is \$8773.02, which will be divided between the two subclass members identified in Plaintiffs' Exhibit J.

¹²See note 9.

Failure to Pay Wages Due - Deducting Washington State Tax	49	¹³	¹⁴
Failure to Pay Wages Due - Not paying Approved Bin Rate of \$19 in Pear Harvest	24	\$100	\$2,400
Total		\$480	\$49,610

The Court has considered the *Six Mexican Workers* factors as well as the unique circumstances of this case and determined that statutory damages in the amount set forth above represent an appropriate amount of damages to compensate Plaintiffs, deter Defendants, and encourage Plaintiffs to enforce their rights.

FLCA, which was modeled after FLCRA, was enacted to protect the migrant worker population. Indeed, previous cases documented the horrors that migrant workers experienced at the hand of unscrupulous farm labor contractors. *See Martinez v. Mendoza*, 595 F.Supp.2d 923 (N.D. Ind. 2009) (plaintiffs traveled from Texas to Indiana on a bus that was not safe and in inadequate housing); *Velasquez v. Khan*, 2005 WL 1683768 (E.D. Cal. 2005) (plaintiffs traveled from Arizona to California, housing that was provided was in grossly substandard conditions); *Castillo v. Case Farms of Ohio, Inc.*, 96 F.Supp. 2d 578 (W.D. Tex. 1999) (plaintiffs traveled from Texas to Ohio, terms and conditions of employment, transportation, and housing did not coincide with promises made to induce them to travel to Ohio).

Here, the class members in this case are not traditional migrant workers. Rather, the class is local workers who resided in the Yakima Valley area and were

¹³The Court is unable to determine the exact number of Valley Fruit Subclass members who were affected by this violation. The total amount of the damages award is \$8773.02, which will be divided between the two subclass members identified in Plaintiffs' Exhibit J.

¹⁴See note 13.

1 seeking work. Notably, there is nothing in the record to suggest that the local
2 workers had traveled to the region to obtain work, nor did they expect to receive
3 housing or subsistence while employed with Global Horizon. These differences
4 are important in determining the appropriate amount of statutory damages. The
5 Court is also mindful that the jury awarded Plaintiffs punitive damages for failing
6 to provide work or for firing, based on race. The conduct the jury considered in
7 awarding the punitive damages is the same conduct that is at issue with respect to
8 statutory damages.

9 The Court awards approximately \$235,000.00 in statutory damages. The
10 Court finds that this amount is sufficient to deter future violations and encourage
11 enforcement of the Act. The individual class members will be receiving \$350.00
12 or more in statutory damages. The Court finds this amount to be adequate to
13 compensate the individual class members for any injury experienced as a result of
14 Global's wrongful conduct.

15 **INDIVIDUAL LIABILITY FOR THE GROWER DEFENDANTS**

16 Plaintiffs seek to hold Jim Morford and John Verbrugge personally liable for
17 their companies' use of an unlicensed farm labor contractor. Previously, the Court
18 concluded that Defendant Mordechai Orian could not be held individually liable
19 for violations of FLCA (Ct. Rec. 863). The Court concluded that in order to be
20 held liable under FLCA, a person must act as a farm labor contractor and, because
21 Plaintiffs did not argue that Orian personally acted as a farm labor contractor or
22 that he personally needed to obtain a license under FLCA, he could not be held
23 individually liable as a matter of law.

24 The analysis is somewhat different because the corporate Grower
25 Defendants are jointly and severally liable as a result of the corporation's use of the
26 services of an unlicensed farm labor contractor. The provision at issue is Wash.
27 Rev. Code § 19.30.200, which provides, in part:

28 Any person who knowingly uses the services of an unlicensed
farm labor contractor shall be personally, jointly, and severally liable

1 with the person acting as a farm labor contractor to the same extent
2 and in the same manner as provided in this chapter.

3 Plaintiffs argue that other state labor laws make officers liable with their
4 corporations for violations of wage payment laws, and refer to Wash. Rev. Code §
5 49.52.020, which specifically states that “[a]ny employer or officer, vice principal
6 or agent of any employer who [list of wrongful conduct] . . . shall be guilty of a
7 misdemeanor.” There, however, the plain language of the statute specifically
8 provides liability on the part of an employer or officer. If anything, Plaintiffs’
9 example supports the premise that liability under § 19.30.200 would not extend to
10 the officers of a corporation who uses the services of an unlicensed farm labor
11 contractor. If the Washington legislation intended to hold officers liable, it could
12 have clearly written the statute in a manner similar to § 49.52.020. It did not. As
13 such, the Court is left with the plain language of the statute, which requires the
14 person to use the services of an unlicensed farm labor contractor. There is nothing
15 in the record to suggest that Mr. Morford or Verbrugge personally used the
16 services of an unlicensed farm labor contractor. The Court declines to impose joint
17 and several liability on these Defendants.

18 INJUNCTIVE RELIEF

19 Plaintiffs seek a permanent injunction against Global Horizon to prevent it
20 from operating as a farm labor contractor in Washington until the company obtains
21 valid federal and state contracting licenses. Plaintiffs request that any injunction
22 remain in place until Global has paid in full all sums owing from this lawsuit and
23 any other money judgments owed to farm workers they employed in Washington.
24 Plaintiffs also seek a permanent injunction against the Grower Defendants to
25 enjoin them from using the services of an unlicensed farm labor contractor.

26 Wash. Rev. Code 19.30.180 provides:

27 The director or any other person may bring suit in any court of
28 competent jurisdiction to enjoin any person from using the services of
an unlicensed farm labor contractor or to enjoin any person acting as a
farm labor contractor in violation of this chapter, or any rule adopted
under this chapter, from committing future violations. The court may

1 award to the prevailing party costs and disbursements and a
2 reasonable attorney fee.

3 Generally, when issuing an injunction, the Court is exercising its equitable
4 powers. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). In this
5 case, however, the authority to issue the injunction is not necessarily a function of
6 the Court's equitable powers, but is a statutorily-conferred power. Even so, the
7 Court concludes that the proper test to apply is the traditional four-factor test
8 recognized in *eBay, Inc.* *See id.* (applying test where party was seeking an
9 injunction under the Patent Act). Therefore, in order to obtain a permanent
10 injunction, Plaintiffs must demonstrate the following:

11 (1) they have suffered an irreparable injury;

12 (2) that remedies available at law, such as monetary damages, are inadequate
13 to compensate for that injury;

14 (3) that, considering the balance of hardships between plaintiffs and
15 defendants, a remedy in equity is warranted; and

16 (4) that the public interest would not be dis-served by a permanent
17 injunction.

18 *Id.* at 390; *see also Geertson Seed Farms v. Johanns*, 541 F.3d 938, 943 (9th Cir.
19 2008).

20 An injunction is an extraordinary remedy. *Weinberger v. Romero-Barcelo*,
21 456 U.S. 305, 312 (1982). "An injunction should issue only where the intervention
22 of a court of equity 'is essential in order effectually to protect property rights
23 against injuries otherwise irremediable.' " *Id.* The relief granted must not be
24 "more burdensome than necessary to redress the complaining parties." *Bresgal v.*
25 *Brock*, 843 F.2d 1163, 1169 (9th Cir. 1988). Moreover, under the teachings of
26 *eBayInc.*, an injunction should not "automatically issue" when a FLCA violation is
27 found. *See Geertson*, 541 F.3d at 944 (holding that traditional balancing test is
28 appropriate and that an injunction is not automatic when a NEPA violation is
found).

1 Plaintiffs seek an injunction against both the Global Defendants and the
2 Grower Defendants. Plaintiffs have failed to show that the extraordinary relief of a
3 permanent injunction is warranted in this matter.

4 **(1) Irreparable Harm**

5 Plaintiffs argue that they will suffer irreparable harm because the Global
6 Defendants are unlikely to pay for past violations, and future violations would
7 require multiple lawsuits and leave Plaintiffs in an untenable position.

8 The test is whether the parties will suffer irreparable harm if the injunction is
9 not granted. Here, the record does not support a finding that it is likely that Global
10 will commit further violations. Global has admitted to committing violations under
11 FLCA. And there is evidence in the record that Global took steps to remedy past
12 violations. For instance, although it did operate as an unlicensed farm labor
13 contractor for a period of time, it is undisputed that it eventually obtained the
14 Washington state license.

15 Likewise, Plaintiffs argue that the harm suffered by them would have been
16 prevented if the Grower Defendant had not contracted with Global. This may be
17 true but it does not support a finding of irreparable harm if the injunction would
18 not be granted.

19 The Court does not find that the record supports an inference that Global or
20 the Grower Defendants are likely to violate the FLCA in the future.

21 **(2) Adequate Remedy at Law**

22 The FLCA provides for actual and statutory damages for violations of
23 FLCA. Plaintiffs have not demonstrated that these damages are inadequate.

24 **(3) Balance of Hardships**

25 Plaintiffs urge the Court to find that Global is likely to violate the FLCA in
26 the future, which presumably would tip the balance of hardship in favor of
27 Plaintiffs. Likewise, the Grower Defendants' complicity in Global's unlawful
28 objectives to replace local workers with H-2A workers tips the balance in

1 Plaintiffs' favor.

2 Plaintiffs' arguments do not demonstrate that the balance of hardships tip in
3 favor of Plaintiffs.

4 **(4) Interest of the Public**

5 Plaintiffs argue that there is no public interest in allowing Global to operate
6 as a farm labor contractor in the state of Washington unless farm workers have
7 been made whole regarding past abuses. Plaintiffs have not provided any case law
8 that would give the Court the authority to do what Plaintiffs are asking the Court to
9 do.

10 The Court finds that Plaintiffs have not met their burden of showing that an
11 injunction is necessary or appropriate in this case.

12 **PROOF OF IMMIGRATION STATUS**

13 The question of whether the class members would have to prove
14 immigration status in order to recover actual or statutory damages permeated
15 throughout the proceedings. The Court declined to address the issue as it related to
16 damages based on the summary judgment motion, but in a prior order indicated
17 that proof of immigration status was going to be required for those persons who
18 sought damages under the claims proven at trial. At the time of making that
19 statement, the Court presumed that Plaintiffs would be seeking actual damages.

20 In response to the Court's statement, Plaintiffs filed a motion asking the
21 Court to clarify its ruling (Ct. Rec. 868). In ruling on Plaintiffs' motion, the Court
22 concluded that the relationship between the claims decided on summary judgment
23 and the claims decided by the jury needed to be analyzed in the context of
24 Plaintiff's anticipated damage presentation for each claim for which liability had
25 been established (Ct. Rec. 883). Specifically, the Court stated, "whether and how
26 much an illegal alien can recover for violations of FLCA will depend on the
27 circumstances of the alien and the nature and scope of the violation."

28 Upon further reflection, the Court makes the following observations. The

1 representative Plaintiffs have established that they were legally eligible to work.
2 There is no evidence to the contrary in the record. Similarly, there is no evidence
3 in the record that absent class members were not legally eligible to work, just as
4 there is no evidence in the record that absent class members were not able to meet
5 the physical requirements of the Clearance Order. Therefore, the Court finds that
6 absent class members are eligible to work.

7 Moreover, denied work class members only have to show that they were
8 offered employment to meet their eligibility for class membership. Global made
9 offers prior to verifying immigration status. Global was required to do so to avoid
10 possible exposure to charges of discrimination. Since Global was not required to
11 verify authorization to work prior to the Denied Work subclass members actually
12 starting work, the Court declines to impose verification requirements to recover
13 statutory damages for FLCA violations. A class member would not have been
14 required to show proof of authorization to work until they commenced work—an
15 opportunity Global denied them by failing to provide work as promised.

16 The Court is also concerned that immigration status is an issue in this case
17 only as a result of an unspoken perception that persons with Hispanic last names
18 are not eligible for work. The Court declines to perpetuate any stereotyping of the
19 local Hispanic population by assuming that persons with Hispanic surnames who
20 applied for work with Global are not eligible to work.

21 Given that Plaintiffs are no longer seeking actual damages, the Court finds
22 that the Denied Work subclass will not have to show proof of eligibility to work in
23 order to recover statutory damages. The purpose of statutory damages is to
24 compensate, deter and encourage persons to enforce their rights under the statute.
25 Plaintiffs were aggrieved irrespective of their eligibility to work. As such, proof of
26 eligibility to work is not necessary in order to receive statutory damages.

27 **DISTRIBUTION OF PUNITIVE DAMAGES**

28 The jury awarded punitive damages to each of the three subclasses for

1 violating 42 U.S.C. § 1981. For the reasons stated above, the Court concludes that
2 members of the Denied Work subclass are entitled to share in the award of punitive
3 damages without proving they were authorized to work.

4 Plaintiffs ask that the Court distribute the punitive damages on a pro-rata
5 basis to all subclass members. Here, it would be difficult to determine the
6 comparative value of an individual class member's lost opportunity and suffering
7 relative to the other class members as a result of Global's discriminatory conduct.
8 The Court adopts Plaintiffs' request to distribute the punitive damages award
9 among subclass members on a pro rata basis.

10 **PROPOSED COURSE OF ACTION**

11 In Court Record 901, the parties agreed that all class members will need to
12 submit claim forms and agreed to a ninety-day period for class members to submit
13 their claim forms. As set forth above, class members will not be required to verify
14 his or her entitlement to any of the damages. Thus, there is no need to appoint a
15 claims administrator. Instead, the Court finds that it is appropriate for Plaintiffs'
16 counsel to administer the claims process. Plaintiffs are directed to submit a
17 proposed plan regarding the claims process to the Court, consistent with this Order.

18 Accordingly, **IT IS HEREBY ORDERED:**

19 1. Plaintiffs' Motion in Support of Award of FLCA Statutory Damages
20 (Ct. Rec. 761) is **GRANTED**.

21 2. Plaintiffs' Motion to Admit Evidence; Motion to Quash Subpoenas (Ct.
22 Rec. 1029) is **GRANTED**, pursuant to the Court's oral ruling.

23 3. Plaintiffs' Motion to Expedite; Motion for Leave to File Excess Pages
24 (Ct. Rec. 1066) is **GRANTED**.

25 4. Within 10 days from the date of this Order, Plaintiffs are directed to
26 submit a proposed plan regarding the claims process to the Court. Defendants can
27 file a response according to the Local Rules.

28 5. A telephonic hearing on Plaintiffs' proposed plan is set for **May 21**,

1 **2009, at 9:30 a.m.** Counsel are directed to dial the Court conference line, (509)
2 458-6380, to participate in the hearing.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
4 Order and to provide copies to counsel.

5 **DATED** this 15th day of April, 2009.

6 *s/ Robert H. Whaley*

7 ROBERT H. WHALEY
8 Chief United States District Court

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